

HOA Foreclosures: Homeowner Equity Protection and Rentals Administered by the Dept of Regulatory Agencies (DORA)

Developed by the Colorado HOA Forum

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Introduction

HOA home foreclosures based on delinquent assessments can result in a homeowner losing most or all of their home equity through foreclosure. The main cause of this is a result of the home being sold at an unreasonably low sales price at an HOA foreclosure auction. Currently, there is no guaranteed sales price at the auction to protect homeowner equity or to protect the homeowner from having their home auctioned off for a small fraction of its actual market value. This Bill would establish an opening bid at an HOA foreclosure auction equal to 70% of the home's market value. HOA Super Lien plus outstanding property taxes. This proposal sets a minimum home sales price (MSP) that secures 60% of homeowner equity, pays off the Super Lien, taxes owed on the property and first mortgage. The MSP allows for investors purchase and resell at profits ranging from 15-25%+ on a resale (depending on homeowner equity and other factors)

Use in part, full or not at all

This Bill also addresses rental units in the HOA and mitigating a problem that exists when the home owner collects rent but does not pay the periodic assessment to the HOA. This can lead to foreclosure on a rental and/or eviction of a tenant who is up to date with their rental payment but the owner fails to pay the assessment. HOA homeowner rental approval and rules must be updated as indicated in this proposal to ensure landlords not only collect rental amounts but pay the HOA for assessments that are part of the rental amount.

Requirements:

- HOA foreclosures can only be approved, pursued and initiated with HOA Board approval.
- All billing and collection procedures set forth in CCIOA and the HOAs governing documents must be completed as stated prior to the HOA filing for approval of the foreclosure in the courts.
- The homeowner can cure the total HOA debt (not the super-lien that is limited in amount) to cancel the foreclosure at any time up to 5 days prior to the HOA auction. The HOA can't refuse the homeowner's offer to settle the debt in support of the foreclosure. The homeowner will inform the HOA of intent to cure debt no later than 10 days prior to the home sale auction date and payment to the HOA made no later than 5 five days prior to the auction date. The option by the homeowner to cure the debt and cancel the foreclosure action by the HOA doesn't have to be approved by the HOA Board.
- The homeowner must be offered a payment plan to cure the super-lien and cancel foreclosure activity during the HOA-homeowner hearing or prior. A payment plan will be longer than one year. If the payment schedule is not met twice during the twelve-month-period the HOA can cancel the payment plan and proceed with the foreclosure: gain court approval of the foreclosure and proceed with the auction.

- The HOA's lien paid-off with foreclosure is referred to as a super-lien. It has the highest priority in distribution of sales proceeds. The super-lien amount is no more than equivalent of six months of assessments plus administrative costs (mailing, delivery, copying...) of no more than \$50 plus maximum of \$2,500 in legal expenses. Foreclosure notification and collection action can begin when the homeowner is three months in arrears. The total HOA lien amount might be greater than the authorized super-lien amount. The amount of difference can be collected by the HOA through normal collection procedures or by filing a lien against the property that takes a priority after paying the super lien, the 1st mortgage (and 70% of homeowner equity if applicable) but will not be considered in establishing a minimum sales price (MSP).
- Assessments must be three-months in arrears prior to initiating foreclosure notification and legal action by the HOA. Special assessments are not considered "assessments". Assessments are the monthly or other time period regular payments to the HOA from the homeowner for use in maintaining the community and paying overhead expenses. Special assessments relate to an assignment of debt to the homeowner to fund a community initiative, major maintenance project, to replenish reserve funds or other isolated financial need. HOA super lien that is filed by the HOA during the foreclosure process can't be greater than six months of assessments plus \$2,500 in legal fees and \$50 in administrative costs.
- HOAs will include specific requirements in their governing documents concerning foreclosures and rentals to include but not limited to:
 1. If rentals allowed
 2. Does the HOA have a maximum number of rental units permitted in the HOA are short term rentals permitted and if so, define what is considered a short-term rental and associated duration periods
 3. Process to gain homeowner approval to rent a property
 4. Any maximum number of rentals in a community that are owned by one or more persons, owned by out-of-state investors, owned by a person or business who will not be the occupant of the property.
 5. Responsibilities of home owner and tenant and the HOAs authority to fine for violations or to evict a tenant. Fines related to covenant violations are the responsibility of the home owner.
 6. All fees, assessments and other debt are the homeowner's responsibility and not the renter's.
 7. Indicate that HOA assessments, monthly or otherwise, on rental properties must be paid directly to the HOA and only through automatic payment from a financial account
 8. The HOA notify the homeowner of how to cure the debt supporting the foreclosure including where to send the payment and how (certified mail, EFT, etc.)
 9. The HOA will not invoice the tenant for any fees or assessments.
 10. Authority of the HOA to evict a problem tenant
 11. Pet policies for tenants and related fines
 12. The billing and collection policies of the HOA and in CCIOA are applicable to rental properties

- 13. The home owner will provide the billing address for any notifications or correspondence concerning the rental unit (this can't be that of the tenant). All other HOA requirements imposed upon rental properties remain valid**
- 14. The HOA can begin legal action or eviction to collect delinquent assessments when the rental unit owner is in arrears three months regardless of what the HOAs operating policies indicate for non-rental units.**
- 15. HOA amenities will not be available to a landlord or tenant when the property is delinquent by three months with proper notification to the owner and tenant.**

- **An HOA home foreclosure will require the HOA or other party to set a minimum sales price on the home for use in establishing an opening bid at the home sale auction and an amount to be used by the homeowner if they are selling their home on the open market to fund foreclosure financial obligations. The minimum price when selling one's home is the full market value of the home but the final sales price can be no less than 70% of market value.**
- **The opening bid at the auction requires a minimum sales price computed based on this Bill: 70% of market value as determined by a professional appraiser less the amount of super lien and taxes less amount of outstanding first mortgage. Proceeds from the sale of the home to be distributed in this hierarchy: Super Lien, first mortgage, **any amount due to the HOA after payment of Super Lien, and any subordinate liens as applicable with the remaining amount of proceeds to the homeowner.** If using alternative HOA equity protection Bill then subtract 70% of homeowner equity**
- **The home owner will have the option presented to them during hearing to sell their home on the open market to settle the amount owed with a beginning list price equal to market value but not less than 70% of market value. Sales proceeds must be distributed to priority lien holders with the remainder retained by the homeowner. If the home is not sold within 120 days after being up for sale on the open market the in HOA could require it be placed and sold at an HOA home auction with the opening bid of the minimum sales price.**
- **Prior to the HOA pursuing home foreclosure, the homeowner would be required to attend (or decline signature) a credit counseling session that explains their options to avoid an HOA foreclosure, selling their home themselves on the open market, how to keep possession of and continue living in their home and other topics on homeowner options. The cost of this session will be paid for by the homeowner.**
- **A hearing between the homeowner and HOA Board will be conducted prior to the HOA pursuing foreclosure action. The meeting is intended to resolve the delinquent debt prior to any Board foreclosure action. The hearing must be completed after the homeowner attends a mandatory credit counseling session. There is no cost to the homeowner for the hearing. No legal representation is allowed to attend the hearing unless both homeowner and HOA agree to their presence and paying such legal costs.**
- **The homeowner will be offered choices to settle the debt. The selection of one of the processes is binding upon the HOA and homeowner:**
 - **PAYMENT PLAN TO SETTLE HOA DEBT AND AVOID FORECLOSURE: 12 months or less**
 - **AUCTION OPENING BID 70% OF MARKET VALUE (THIS BILL) with no guaranteed**

equity protection

- AUCTION WITH GUARANTEED EQUITY PROTECTION OF 70% (HB 24-1158)
 - OWNER SELLS THE HOME ON THE OPEN MARKET USING APPRAISAL VALUE AS LIST OPENING PRICE WITH THE BOTTOM SALES PRICE OF NO LESS THAN 70% OF MARKET VALUE OF HOME
 - ALLOW FORECLOSURE TO PROCEED THROUGH THE COURTS WITH NO MINIMUM SALES PRICE AT AUCTION: what we have now.
- Other options can be presented and must be approved by the Board and HO

- **Prior to credit counseling, the HOA will provide the homeowner an account statements for the past 6 months, the estimated market value of the home, an estimate of the super-lien and a statement from the 1st mortgage company on the balance owed. This information is required early in the foreclosure process to make credit counseling and the HOA hearing with the homeowner effective and productive.**
- **This Bill will have a fiscal note of zero.**
- **Notification and letter issuance charges sent to a homeowner from an HOA property management company or legal firm concerning HOA debt, fines or concerning foreclosure action will be capped at \$25 plus mailing and delivery charges.**
- **The HOA foreclosure can be judicial or non-judicial**
- **Mediation is optional upon agreement between the HOA and homeowner but only after credit counseling and the HOA hearing are complete and no settlement is reached and 14 days prior to the scheduled auction date. If no agreement is reached in either the hearing or optional mediation the HOA can pursue**
- **Removing the requirement for an HOA rental payment plan between the HOA and landlord to extinguish assessment debt, be paid in amounts of at least \$25 until the balance owed is less than \$25. Change to: The amount of each installment payment for HOA unit owners or for a rental property to be no longer than nine months of equal payment amounts.**
- **Remove the requirement that an HOA physically post notice of a unit owner's delinquent account on the unit owner's unit or property**
- **HOAs and their attorney are prevented from sending any SLAPP/threatening letters to homeowners concerning impending foreclosure or collection action. Notification letters to homeowners concerning delinquency will be restricted to the HOAs billing and collection policy and CCIOA.**
- **No Status Letter or Home Sale Transfer Fee will be charged to the homeowner or anyone else involved in an HOA foreclosure unless such charge is considered to be extraordinary and unique and any such charges supported by an invoice to the home seller describing what the charges are for, line-item costs, when the expense was incurred and that it has Board approval. This includes charges to the home seller or anyone else for documentation or home owner account statements of debt and payment of assessments.**